IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.345 of 2001

Decided on: January 4, 2006.

Ishtjeet Singh **…..Appellant.**

VERSUS

Pepsu Road Transport Corporation and others **.....Respondents.**

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No

For the Appellant : **Ms.Sunita, Sharma, Advocate.**

For the Respondents : **Mr.Ajay Sharma, counsel for R-1.**

Deepak Gupta,Judge (Oral)

This appeal, by the claimant for enhancement of compensation, under Section 173 of the Motor Vehicles Act is directed against the award of the award of the Motor Accident Claims Tribunal, Solan, H.P. (hereafter referred to as 'the Tribunal') passed in M.A.C. Petition No.11-S/2 of 1999 decided on 19.7.2001.

2. The claimant suffered injuries in an accident involving Bus No.PB-11-5845 on 26.11.1997. This bus is owned by Pepsu Road Transport Corporation. Handam Khan, respondent No.3 was the driver and Prem Chand, respondent No.4 was the conductor of the bus. The claimant suffered serious injuries to his right leg in

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? yes***

the accident and, therefore, filed a claim petition for compensation. The Tribunal has awarded total compensation of Rs.1,42,000/- under the following heads:

Medical expenses	:	Rs.50,000/-
Physical agony, suffering, mental Stress, strain & tension	:	Rs.40,000/-
Litigation cost	:	Rs.2,000/-
Loss of amenities of life	:	Rs.50,000/-

The appellant dis-satisfied from the said award has filed the present appeal.

3. I have heard Ms.Sunita Sharma, counsel for the appellant and Mr.Ajay Sharma, counsel for respondent No.1.

4. It is argued on behalf of the appellant that the appellant has suffered 55% disability. His right leg is virtually totally disabled and the claimant is unable to earn his living. Ms.Sunita Sharma, further submits that the Tribunal has erred in not awarding medical expenses proved on record.

5. In a claim for injuries the claimant has to be awarded compensation for pecuniary loss as well as for non-pecuniary loss. Under the head of pecuniary loss, the claimant is entitled for expenses of medicines and hospitalization, transportation, attendant charges, loss of income and the estimated future loss of income. Under the head of non-pecuniary damages the claimant is entitled to loss on account of pain, suffering and mental agony and for future discomfort, loss of amenities, loss of enjoyment of life, loss of matrimonial prospects etc.

6. In this case PW-1 Dr.Manoj Thakur, has proved on record the disability certificate Ext.PW-1/A which shows that the claimant suffered crush injury to the right leg with fracture to the right femur and tibia. He was admitted in hospital from 26.11.1998 to 24.2.1999 i.e. almost a period of 3 months. The claimant has produced and proved on record medical expenses with regard to hospitalization and medicines to the tune of Rs.76,176/-. The Tribunal has wrongly not taken into consideration the

bills filed by the appellant on the ground that they have not been proved in accordance with law. The Motor Accident Claim Tribunals are not bound by the strict rules of evidence. In any event these bills have come from the proper custody of the claimant who had spent the amount. It is in the light of this evidence that the compensation has to be assessed in the present case.

7. As far as medical expenses are concerned the proved expenses on record amount to Rs.76,136/-. One cannot loose sight of the fact that when injuries of such serious nature takes place some times all the bills are not kept. Keeping in view all these facts in my view it would be just and reasonable to award Rs.85,000/- for medical expenses and hospitalization.

8. The next head under which the claimant is entitled to compensation is for attendant charges. The claimant remained in hospital for 3 months. He belongs to Solan and was admitted at Shimla. He required attendance day and night. During the 3 months he remained in hospital he would have required two attendants at least. It is well settled law that the compensation has to be awarded to the claimant even for gratuitous services rendered by his family and friends and the tort-feasor cannot be granted benefit of such gratuitous service rendered. While assessing the amount payable to the attendants one has to keep in mind the fact that either the attendants must have been travelling from Solan to Shimla every day or if they had to stay at Shimla their boarding and lodging had to be arranged for. Keeping all these factors into consideration it would not be unreasonable to assess the cost of one attendant at Rs.2500/- per month. The claimant would have required two attendants for at least 3 months and therefore he is awarded Rs.15,000/- on account of attendance in the hospital.

9. The claimant in his statement has stated that he was earning Rs.1000/- per month. He was hospitalized for 3 months and it can be reasonable

presumed that he would not be able to do any work during these three months and thereafter for three months also. Therefore, he is awarded Rs.6000/- on account of loss of income.

10. Next comes the loss of future income. Dr.Manoj Thakur, PW-1 has stated that claimant cannot stand for long and he cannot walk more than short distances at a stretch. It is, thus, clear that the claimant is unable to do work of many types. He alleges that he used to work as driver and conductor in the bus owned by his wife. He has not produced his driving license. Even if it is assumed that he used to manage the bus or was working as conductor in the bus then also he would have to stand for a long time in the bus. His earning capacity has definitely been adversely affected. Keeping in view the fact that disability to his right leg is 55% his loss of earning capacity is assessed at 25% or Rs.250/- per month, which comes to Rs.3000/- per year. The age of the claimant was 27 and, therefore, multiplier of 18 is reasonable. Therefore, he is held entitled to Rs.54000/- on account of loss of future income.

11. Now coming to the head of non-pecuniary loss, keeping in view the fact that the claimant is very young and aged only 27 years and also the fact that he remained admitted in hospital for more than 3 months it would not be unreasonable to award him Rs.30,000/- for mental agony, pain and suffering.

12. As far as future discomfort , loss of amenities, loss of mental agony and other such losses are concerned the evidence clearly indicates that the claimant is virtually crippled as far as his right leg is concerned. He cannot stand for long. He cannot walk more than short distance. He cannot lead normal life. Keeping all these factors into view, in my opinion it would be just and reasonable to award Rs.50,000/- for loss of amenities, discomfort etc.

13. The total compensation works out to Rs.2,40,000/-. On this amount the claimant is entitled to interest @ 9% p.a. w.e.f. 26.2.1999 i.e. the date of filing of the claim petition till deposit of the amount.

14. The appeal is, therefore, allowed and the compensation is enhanced from Rs.1,42,000/- to Rs.2,40,000/- with interest as foresaid. The respondent Pepsu Road Transport Corporation, is directed to deposit the enhanced amount along with interest in the Registry of this Court within 12 weeks from today failing which it shall be liable to pay the interest on the award amount @ 12% p.a. from today. The claimant shall also be entitled to the costs of this petition, which is assessed at Rs.3000/-.

15. The appeal is allowed in the aforesaid terms.

(Deepak Gupta)
Judge.

January 4, 2006.
PV